

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 22, 2003

STATE OF TENNESSEE v. TERRY SCOTT

Appeal from the Criminal Court for Morgan County
No. 8725 E. Eugene Eblen, Judge

No. E2003-00360-CCA-R3-CD
October 9, 2003

The defendant, Terry Scott, was convicted of driving under the influence. See Tenn. Code Ann. § 55-10-401. The trial court ordered a sentence of 11 months, 29 days, with all but four days suspended. In this appeal of right, the defendant contends that the state failed to prove a proper chain of custody for his blood samples and that the evidence was insufficient to support the verdict. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which JOSEPH M. TIPTON and NORMA MCGEE OGLE, JJ., joined.

James W. Brooks, Jr., Wartburg, Tennessee, for the appellant, Terry Scott.

Paul G. Summers, Attorney General & Reporter; David H. Findley, Assistant Attorney General; Scott McCluen, District Attorney General; and Frank Harvey, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Shortly after noon on February 13, 2000, Debra Shannon heard a “wild booming crash” outside of her Deerlodge residence. Upon investigation, she observed that a car driven by the defendant had crashed into a tree. The airbag had deployed, the vehicle was smoking, and the defendant only moaned in response to questions. Ms. Shannon, who was unable to open the car doors, instructed her daughter to telephone 911. Before help arrived, the defendant got out of the vehicle and asked for chewing gum. The defendant was staggering, had blood “all over his face, . . . hair, and ears,” and appeared to have lost several teeth. Ms. Shannon, who smelled alcohol, did not provide gum but later got him a glass of water at his request. She then saw the defendant return to his vehicle, remove some bottles from the car’s glove compartment, and then take a drink before throwing the bottles into a ditch.

By the time Trooper Carlton Haley arrived at the scene, the defendant had already been transported by ambulance to a hospital in Oak Ridge. After questioning Ms. Shannon, Trooper Haley recovered two small bottles labeled “Smirnoff Vodka” from the ditch near the wrecked vehicle. A third small bottle labeled “Soleo 1996 California White Table Wine” was in a boot located in the back seat of the defendant’s vehicle. The trooper determined that the defendant had lost control of his vehicle in a curve, but otherwise did not discover any contributing factors to the accident. When the defendant was interviewed in the emergency room almost five hours after the crash, the defendant exhibited slowed speech and slowed responses to questions. The defendant, who denied that he had been drinking, consented to a blood test. Trooper Haley was present when blood was drawn and personally packaged and shipped the samples to the Tennessee Bureau of Investigation.

After the samples had been received in the mail, opened, and logged in by a TBI evidence clerk, Stephanie Dodson, a special agent forensic scientist with the TBI, performed a drug screen. The test indicated the presence of methamphetamine, a central nervous system stimulant, and meprobamate, carisoprodol, and methadone, all central nervous system depressants. The amounts of meprobamate and methadone in the defendant’s system would have been within the normal therapeutic range.

Over the state’s objection and without the testimony of the witness who had conducted the testing, the trial court allowed the defense to introduce a TBI laboratory report indicating that the defendant’s blood alcohol screen was negative. The parties stipulated that “alcohol in a person’s blood dissipates over time after you stop[] drinking.”

I

Initially, the defendant asserts that the trial court erred by admitting evidence of his blood test results because the state failed to establish a proper chain of custody for his blood samples. The state contends that because the defendant failed to include the issue in his motion for new trial, it is waived and that, in the alternative, the chain of custody was sufficient.

As a condition precedent to the introduction of tangible evidence, a witness must be able to identify the evidence or establish an unbroken chain of custody. State v. Goodman, 643 S.W.2d 375, 381 (Tenn. Crim. App. 1982). The purpose of the chain of custody requirement is to “demonstrate that there has been no tampering, loss, substitution, or mistake with respect to the evidence.” State v. Braden, 867 S.W.2d 750, 759 (Tenn. Crim. App. 1993). While the state is not required to establish facts which exclude every possibility of tampering, the circumstances established must reasonably assure the identity of the evidence and its integrity. State v. Ferguson, 741 S.W.2d 125, 127 (Tenn. Crim. App. 1987). This rule does not require absolute certainty of identification. Ritter v. State, 462 S.W.2d 247, 250 (Tenn. Crim. App. 1970). Absent sufficient proof of the chain of custody, however, the “evidence should not be admitted . . . unless both identity and integrity can be demonstrated by other appropriate means.” Neil P. Cohen et al., Tennessee Law of Evidence § 9.01[13][c] (4th ed. 2000). A leading Tennessee treatise provides as follows:

The concept of a “chain” of custody recognizes that real evidence may be handled by more than one person between the time it is obtained and the time it is either introduced into evidence or subjected to scientific analysis. Obviously, any of these persons might have the opportunity to tamper with, confuse, misplace, damage, substitute, lose and replace, or otherwise alter the evidence or to observe another doing so. Each person who has custody or control of the evidence during this time is a “link” in the chain of custody. Generally, testimony from each link is needed to verify the authenticity of the evidence and to show that it is what it purports to be. Each link in the chain testifies about when, where, and how possession or control of the evidence was obtained; its condition upon receipt; where the item was kept; how it was safeguarded, if at all; any changes in its condition during possession; and when, where and how it left the witness’s possession.

Id. The issue addresses itself to the sound discretion of the trial court; its determination will not be disturbed in the absence of a clearly mistaken exercise of such discretion. State v. Beech, 744 S.W.2d 585, 587 (Tenn. Crim. App. 1987); State v. Johnson, 673 S.W.2d 877, 881 (Tenn. Crim. App. 1984). Reasonable assurance, rather than absolute assurance, is the prerequisite for admission.

The state correctly asserts that the failure to include a specific ground for relief in a motion for new trial will generally result in waiver on appeal. See Tenn. R. App. P. 3(e), 36(a). The record, however, establishes that the defendant did, in fact, adequately raise the chain of custody issue. In this instance, Trooper Haley observed the blood sampling. Afterward, he labeled and packaged the samples pursuant to a standard procedure. The samples were packaged in a kit with flaps. They were sealed and the flaps were initialed so that any tampering would have been evident. The trooper placed the kit in the United States mail for delivery to the TBI laboratory. Stephanie Dodson, who testified that it was customary practice for a package received by the TBI to be assigned a tracking number and refrigerated until testing, confirmed that the package containing the defendant’s blood samples was received by technician Melena Jenkins. Although she was not a witness at trial, documents indicated that Ms. Jenkins had filled out a form verifying that the package was sealed upon receipt. The tubes of blood were labeled and vacuum sealed until testing.

The burden is on the state to demonstrate that the defendant’s blood samples were “what [they] purport[ed] to be.” The testimony of Trooper Haley and Ms. Dodson provided the beginning and ending “links” of the chain. The position of Ms. Jenkins in the chain was established by Ms. Dodson’s testimony and documented by standard TBI records. See State v. Bobby Wells, Jr., No. E2000-01496-CCA-R3-CD (Tenn. Crim. App., at Knoxville, June 28, 2001) (finding sufficient chain of custody for admission of drug evidence notwithstanding failure of TBI lab technician who received and logged the evidence to testify). There was no evidence at all of any tampering with the blood samples. In our view, the state properly established a basis for admission of the blood test results.

II

The defendant also contends that the evidence was insufficient to support his conviction. On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992).

Tennessee Code Annotated § 55-10-401(a)(1) provides that it “is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state . . . while . . . [u]nder the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system.” Here, the defendant admitted to Trooper Haley that he had been driving at the time of the crash. The defendant’s request for chewing gum, which might have masked the odor of alcohol on his breath, cast suspicion on his degree of sobriety. Ms. Shannon smelled alcohol on the defendant’s breath, saw him drink from a vodka bottle, and watched as he disposed of two alcohol containers. A bottle of wine was in the back seat. When interviewed several hours after the accident, the defendant smelled of alcohol and displayed slowed speech. Although the defendant’s blood alcohol test was negative, the defense properly stipulated that blood alcohol content dissipates over time. Most significantly, the drug screen conducted on the defendant’s blood revealed the presence of controlled substances which would affect the central nervous system. In our view, the evidence was sufficient to sustain the conviction.

Accordingly, the judgment of the trial court is affirmed.

GARY R. WADE, PRESIDING JUDGE